



Automated Legal Guidance at Federal Agencies

Committee on Administration and Management

Proposed Recommendation for Committee | April 26, 2022

1 Federal agencies increasingly automate the provision of legal guidance to the public
2 through online tools and other technologies (which, together, constitute “automated legal
3 guidance”). The Internal Revenue Service, for example, encourages taxpayers to seek answers to
4 questions regarding various tax credits and deductions through its online “Interactive Tax
5 Assistant,” and the United States Citizenship and Immigration Services suggests that potential
6 green card holders and citizens with questions about their immigration rights communicate with
7 its interactive chatbot, “Emma.” Almost a dozen federal agencies have either implemented or
8 piloted automated legal guidance tools in just the past three years.¹ This Recommendation
9 defines “guidance” broadly to include interpretive rules, general statements of policy, and other
10 materials that provide information about an administrative program.

11 Automated legal guidance tools can take several forms. The most common are chatbots
12 and virtual assistants.² The simplest chatbots provide standardized responses based on keywords
13 included in a user’s question. Although the terms can overlap, virtual assistants tend to be more
14 versatile than chatbots and can often perform additional tasks such as making an appointment or

¹ They include the Internal Revenue Service, United States Customs and Immigration Services, the Department of Education, the Social Security Administration, the Patent and Trademark Office, the Army, the General Services Administration, the Veterans Benefits Administration, the Food and Drug Administration, the National Institutes of Health, and the Environmental Protection Agency.

² Joshua D. Blank & Leigh Osofsky, Automated Legal Guidance at Federal Agencies (Mar. 25, 2022) (draft report to the Admin. Conf. of the U.S.).



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15 filling out a form in response to a conversation.³ More robust tools rely on natural language
16 processing, a form of technology that can interpret natural human speech, or artificial
17 intelligence to interpret natural language and generate an individualized response.⁴

18 Agencies use automated legal guidance tools for a number of reasons. These reasons
19 include efficiently allocating limited staff resources, improving customer experience and service
20 delivery, and enhancing the quality, consistency, speed, and predictability of guidance provided
21 to the public. Because they are always available from any location and can efficiently and
22 effectively provide answers to common questions, automated legal guidance tools have the
23 potential to revolutionize the provision of agency guidance to the public.

24 Critics argue, however, that automated legal guidance tools can oversimplify the law,
25 leading members of the public to sometimes rely to their detriment on guidance that is imprecise
26 or misleading. Although the same can be said for other explanatory materials, such as brochures
27 and fact sheets, automated legal guidance tools pose unique concerns because they can appear to
28 be human. Users may perceive the kind of instantaneous and seemingly personalized responses
29 provided by an automated legal guidance tool to be more powerful or persuasive than a guidance
30 document.

31 The Administrative Conference has previously adopted several recommendations on the
32 development, use, and public availability of agency guidance documents.⁵ This Recommendation
33 builds on those recommendations by identifying best practices for agencies to consider when

³ *Id.*

⁴ See Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 Fed. Reg. 6616 (Jan. 22, 2021); Blank & Osofsky, *supra* note 2.

⁵ See Admin. Conf. of the U.S., Recommendation 2021-7, *Public Availability of Inoperative Agency Guidance Documents*, 87 Fed. Reg. 1718 (Jan. 12, 2022); Admin. Conf. of the U.S., Recommendation 2019-3, *Public Availability of Agency Guidance Documents*, 84 Fed. Reg. 38,931 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2019-1, *Agency Guidance Through Interpretive Rules*, 84 Fed. Reg. 38,927 (Aug. 8, 2019); Admin. Conf. of the U.S., Recommendation 2017-5, *Agency Guidance Through Policy Statements*, 82 Fed. Reg. 61,734 (Dec. 29, 2017); Admin. Conf. of the U.S., Recommendation 2014-3, *Guidance in the Rulemaking Process*, 79 Fed. Reg. 35,992 (June 25, 2014).



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34 they develop, use, and manage automated legal guidance tools. The Conference recognizes that
35 the use of automated legal guidance tools may not be suitable for all agencies and administrative
36 programs. The Conference also recognizes that, even when automated legal guidance tools are
37 used, agencies may wish to supplement those tools by, for example, hiring and training customer
38 service representatives. This Recommendation provides best practices to guide agencies when
39 considering using automated legal guidance tools.

RECOMMENDATION

Design and Management

- 40 1. Agencies, especially those that have a high volume of individual interactions with
41 members of the public who may not be familiar with legal requirements, should explore
42 the possible benefits of offering automated legal guidance tools, including enhancing
43 administrative efficiency and helping the public understand complex laws in plain
44 language.
- 45 2. Agencies should also weigh the potential downsides of automated legal guidance tools,
46 including oversimplifying the law, letting guidance appear more personalized than it
47 actually is, and not adequately disclosing that users cannot rely on the guidance to bind
48 the agency.
- 49 3. Agencies using automated legal guidance tools should design and manage them in ways
50 that promote fairness, accuracy, clarity, efficiency, accessibility, and transparency.
51 Agencies should also ensure that automated legal guidance tools do not displace other
52 agency mechanisms for increasing access to the underlying law.
- 53 4. Agencies should adopt clear procedures for designing, maintaining, and reviewing the
54 substance embedded in automated legal guidance tools and should publish these
55 procedures on their websites. These procedures should incorporate periodic user testing
56 in order to ensure accessibility and effectiveness.



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- 57 5. The General Services Administration should regularly evaluate the relative costs and
58 benefits of using outside vendors for the introduction of automated legal guidance tools
59 and share such information with agencies.
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Accessibility

- 61 6. Agencies should utilize human-centered design methodologies, empirical customer
62 research, and user testing, as described and defined in Executive Order 14,058,
63 *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in*
64 *Government.*
- 65 7. Agencies should, consistent with applicable laws and policies, design automated legal
66 guidance tools to ensure they meet the needs of the particular populations that are
67 intended to utilize the automated legal guidance tools.
- 68 8. Agencies should periodically review and reconfigure automated legal guidance tools to
69 ensure they meet the needs of the particular populations that are intended to utilize the
70 automated legal guidance tools.
- 71 9. Agencies should ensure that information provided by automated legal guidance tools is
72 stated in plain language understandable by the particular populations that are intended to
73 utilize the automated legal guidance tools, consistent with the Plain Writing Act of 2010;
74 Recommendation 2017-3, *Plain Language in Regulatory Drafting*; and other applicable
75 laws and policies.
- 76 10. Agencies should design automated legal guidance tools to provide contact information
77 for a human customer service representative to whom users can address questions not
78 answered by the automated legal guidance tools, or if they are having difficulty using an
79 automated legal guidance tool.

Transparency

- 80 11. When the underlying law is unclear or unsettled, or where the legal guidance depends
81 upon disparate factual situations, agencies should be transparent about the limitations of



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- 82 the advice the user is receiving. To the extent practicable, agencies should also provide
83 access through automated legal guidance tools to the legal materials underlying the
84 automated legal guidance tool, including relevant statutes, rules, and judicial or
85 adjudicative decisions.
- 86 12. Agencies should disclose how an automated legal guidance tool stores personal data and
87 how that data is utilized by the agency.
- 88 13. Agencies should update the substance of the automated legal guidance tools to reflect
89 legal developments or correct errors in a timely manner. Agencies should also maintain a
90 publicly accessible archive that identifies and explains such updates.
- 91 14. When automated legal guidance tools do not learn to provide different answers to users'
92 questions over time, agencies should consider publishing the questions and responses the
93 agency has programmed in advance to provide an immediate and comprehensive source
94 of information regarding the automated legal guidance tools. Agencies should post this
95 information in an appropriate location on their websites and make it accessible through
96 the automated legal guidance tool to which it pertains.
- 97 15. When automated legal guidance tools learn to provide different answers to users'
98 questions over time, agencies should consider publishing information related to how the
99 machine learning process was developed and how it is maintained and updated. Agencies
100 should post this information in an appropriate location on their websites and make it
101 accessible through the automated legal guidance tool to which it pertains.
- 102 16. Agencies that use automated legal guidance tools should provide users an option to
103 provide feedback or report errors.
- 104 17. When applicable, agencies should provide disclaimers that the automated legal guidance
105 tool is not human.

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Reliance



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- 107 18. Agencies should allow users to obtain a written record of their communication with
108 automated legal guidance tools and should include date and time stamps for the
109 information provided.
- 110 19. Agencies should consider whether and under what circumstances a person's good faith
111 reliance on guidance provided by an automated legal guidance tool should serve as a
112 defense against a penalty or other consequences for noncompliance with an applicable
113 legal requirement, and it should prominently announce that decision to users.
- 114 20. If an agency takes the position that it can depart from an interpretation or explanation
115 provided by a chatbot or other automated tool in a subsequent investigative or
116 adjudicative proceeding, it should prominently announce that fact to users.
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